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# F7b

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49 <sup>th</sup> Day:	Opened and Continued
Staff:	Jim Baskin
Staff Report:	December 22, 2000
Hearing Date:	January 12, 2001
Commission Action:	

**STAFF REPORT:****DE NOVO HEARING ON APPEAL**

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	<b>A-1-MEN-00-20</b>
APPLICANT:	<b>R. D. Beacon</b>
AGENT:	T.M. Herman & Associates
PROJECT LOCATION:	Approximately two miles south of Elk, along both sides of Highway 1, Mendocino County, APNs 131-010-12X & 131-010-14X.
PROJECT DESCRIPTION:	Boundary line adjustment to re-configure two legal parcels. The existing parcels are $\pm 38.5$ (Lot #1) and $\pm 51.5$ (Lot #2) acres respectively. Currently, State Highway Route 1 bisects Lot #1 such that 9+- acres lie on the west side and $\pm 29.5$ acres lie east of the highway. As proposed, the $\pm 29.5$ acres lying east of the highway would be combined with existing Lot #2 (also lying east of the highway) resulting in an $\pm 81$ -acre parcel east of the highway and leaving a $\pm 9$ -acre parcel west of the highway.

APPELLANTS:	1) <b>Peter Reimueller, Friends of Schooner Gulch &amp; Hillary Adams and Roanne Withers, Sierra Club; and</b>
	2) <b>Commissioners Sara Wan &amp; John Woolley</b>
SUBSTANTIVE FILE:	1) Mendocino County CDB No. 89-99; and
DOCUMENTS	2) Mendocino County Local Coastal Program

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### **STAFF NOTES:**

#### 1. **POSTPONEMENT FROM DECEMBER AGENDA**

The *De Novo* Hearing on the appeal had originally been scheduled for the Commission meeting of December 15, 2000. On December 10, 2000, Commission staff received a request from the applicant that the hearing on the appeal be postponed until the Commission's January, 2001 meeting (Exhibit No. 12, page 26). The reason for the requested postponement is to allow the applicant's consultants ample time to review and prepare a response to the staff report and its recommendations. Pursuant to Section 13073 of the Commission's administrative regulations, the applicant had right to postpone the vote to a subsequent meeting. Therefore, the *De Novo* Hearing was postponed to the January Commission meeting. The applicant has not submitted any written comments on the previous staff report, dated November 28, 2000, as of the date that the current staff report had to be finalized. Therefore, this report contains no substantive changes from the report of November 28, 2000.

#### 2. **PROCEDURE**

On June 16, 2000, the Coastal Commission found that the appeal of Mendocino County's approval raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

**SUMMARY OF STAFF RECOMMENDATION:**

1. **SUMMARY OF STAFF RECOMMENDATION *DE NOVO*: DENIAL**

The staff recommends **DENIAL** of the coastal development permit application for the proposed project on the basis that the project, as proposed by the applicant, is inconsistent with the County of Mendocino's certified LCP.

The project as proposed consists of a boundary line adjustment to re-configure two lots on property along both sides of Highway 1 two miles south of the unincorporated town of Elk. Currently the westernmost 38.5-acre parcel extends eastward from the coastal bluffs and includes substantial area inland of Highway 1. The other 51.5-acre parcel involved in the boundary line adjustment is located completely in areas east of Highway 1. The boundary line adjustment would reconfigure the parcels in a manner that establishes Highway 1 as the boundary between the adjusted two parcels, resulting in an approximately 9-acre parcel west of the highway and an 81-acre parcel east of the highway.

Commission staff recommends that the Commission find that the development, as proposed, is inconsistent with the policies of the certified LCP regarding visual resources. Several policies within the County of Mendocino's LCP require that the visual impacts of future development must be considered at the time of a boundary adjustment even though no site improvements may be proposed. Under the current parcel configuration, the property spans both sides of Highway 1, such that a building site could be located on the portion of the parcel east of highway where it would not affect views to and along the ocean. A principal consequence of the approved boundary line adjustment would be the creation of a parcel lying completely west of Highway 1. There would be no building site on the property west of the highway where a home could be placed where it would not affect views to and along the ocean from the highway.

Much of the property on which the boundary adjustment is proposed is designated as a "highly scenic area." The certified LCP does not contain any policies that prioritize views to and along the ocean as being a visual resource of greater importance than landward views in designated highly scenic areas. Recognizing this fact, the applicant asserts there is no location on the parcel where visual impacts of future development of the parcels could be completely avoided. The applicant also maintains that due to the presence of extensive wetlands on the portion of the property east of the highway, no suitable visually compatible site exists near the base of the slope for future development that would not result in impacts to environmentally sensitive habitat areas on the parcel. Accordingly, the applicant contends that the proposed boundary adjustment will not result in greater potential impacts to visual and environmentally sensitive resources than exist under the current parcel configurations. Given this situation, the applicant contends that the project should be seen as consistent with the County's LCP and approved.

However, both the County's Land Use Plan (LUP) and the coastal zoning regulations of its Implementation Program (IP) do include siting criteria for instances where buildings must be sited within the highly scenic areas. These prescribed standards direct that visual impacts be minimized by siting buildings: (1) near the toe of a slope, (2) below rather than on a ridge, (3) in or near the edge of a wooded area, (4) so as to avoid development in the middle of large open area or terraces if an alternative site exists, and (5) in clusters near existing vegetation, natural landforms or artificial berms.

The boundary line adjustment as proposed would result in the creation of a legal parcel located entirely west of Highway 1 on which development of a home site would have to occur within a large open terrace area. This arrangement would preclude limiting the construction of all future home sites to the east side of the highway in less visually pronounced locations at the toe of the ridge slope as is currently possible under the present parcel configuration. As any resulting building sites west of the highway would need to occur in an open terrace area where it would significantly affect views to and along the ocean that would not be subordinate to the character of its setting compared with more landward locations, the proposed boundary line adjustment is inconsistent with the provisions of the County's LUP Policies and Coastal Zoning Ordinance. As LUP Policy 3.5-3 states, in applicable part, that "all proposed ... boundary line adjustments within 'highly scenic areas' ... shall not be allowed [emphasis added] if development of resulting parcels could not be consistent with visual policies," staff recommends DENIAL of the application. Staff also notes that no technical data has been supplied to verify the adequacy of the proposed water supply or that adequate sewage utilities would be available to serve the proposed development.

Furthermore, contrary to the assertions of the applicant, based upon the wetlands survey conducted for the site, Commission staff has determined there are suitable sites on the property east of the highway located outside of wetlands and their required buffers. Therefore, staff recommends that the Commission find that project alternatives which result in both parcels having building sites east of the highway are less environmentally damaging feasible alternatives.

## **I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION**

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act and **deny** the permit. The proper motion is:

### **MOTION**

I move that the Commission approve Coastal Development Permit No. A-1-MEN-00-020 for the development proposed by the applicant.

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT:**

The Commission hereby **denies** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

**II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

**A. PROJECT HISTORY / BACKGROUND.**

On March 24, 2000, the County of Mendocino's Coastal Permit Administrator approved with conditions Coastal Development Boundary Line Adjustment Permit #89-99 (CDB #89-99) for the subject lot line adjustment. The County issued a *Notice of Final Action*, which was received by Commission staff on April 6, 2000 [see Exhibit No. 5]. The local decision was then appealed to the Commission, by Peter Reimuller representing Friends of Schooner Gulch, and Dr. Hilary Adams and Roanne Withers of the Mendocino/Lake Group - Sierra Club, in a timely manner on April 18, 2000 within ten working days of receipt by the Commission of the Notice of Final Local Action on April 6, 2000 [see Exhibit No. 6]. On April 20, 2000, a second timely appeal was filed by Commissioners Wan and Woolley [see Exhibit No. 7].

The hearing on the appeal was opened and continued on May 10, 2000. The Commission found on June 16, 2000 that the project as approved by the County raised a substantial issue of conformance with the County's certified LCP. The Commission also continued the *de novo* hearing and requested specific information from the applicant to assist the Commission in evaluating the consistency of the project with the LCP, including: (1) demonstration of proof of water service availability; (2) a wetlands survey; and (3) a geologic investigation. Copies of these items are provided in Exhibit Nos. 8-10.

The applicant provided this information on November 15, 2000, and Commission staff scheduled the *de novo* hearing for the December Commission meeting. On December 10, 2000, the applicant exercised their automatic right of postponement under Section 13073

of the Commission's regulations. Therefore, the item is before the Commission at the January Commission meeting.

**B. PROJECT AND SITE DESCRIPTION.**

**1. Project Setting**

The two parcels involved in the proposed boundary line adjustment are located on both sides of State Highway Route 1, approximately two miles south of the unincorporated town of Elk [see Exhibit Nos. 1 & 2]. The two parcels are vacant and are designated under the Land Use Plan and zoned under the Coastal Zoning Map as Range Lands 160-Acre Minimum Parcel Size (RL-160) [see Exhibit No. 3]. The two parcels under both the existing and proposed lot configuration are non-conforming lots with respect to minimum lot size.

The two parcels were recognized as legal parcels by Certificate of Compliance Application #CC 58-91, issued in 1991. The certificates of compliance issued for that application were issued pursuant to Section 66499.35(a) of the California Government Code, indicating that the land division that created the parcels, at the time it was accomplished, did not need approval under the Subdivision Map Act or a local ordinance enacted pursuant to it. The parcels were legally created prior to the effective date of Proposition 20, the Coastal Initiative. Therefore, no coastal development permit was required to create the existing parcels.

The subject property is within a highly scenic area that is largely undeveloped and characterized by large open grassy agricultural parcels atop a high coastal terrace with a tree-covered coastal ridge as a backdrop to the east. The property is also transected by several emergent and scrub-shrub wetland areas following natural drainage channels and in discrete pockets across the western terrace.

The western edge of the property consists of an ocean bluff, a steep cliff that drops roughly 200 feet to the ocean. From Highway 1, dramatic views are afforded across the western and southern portions of the property to the ocean and the headlands surrounding the cove at the mouth of Elk Creek, just south of the property. Distant horizon views of Point Arena and its lighthouse are also visible along portions of the property's Highway 1 frontage. Landward views from Highway 1 include the terrace pastures and the western flanks of Ridge Cliff to the east, horizon views of Greenview Ridge to the northeast and the promontory south of Elk Creek demarcated on topographic maps as "Sugar."

Remnants of an old narrow-gauge railroad grade can be found along the western edge of the property. According to an archaeological assessment of the property submitted with the application [see Exhibit No. 11], the railroad once traveled along the edge of this portion of the Mendocino County coastline. The grade is excavated into the side of the bluff face on the subject property approximately 10-20 feet below the edge of the bluff,

and in two places forms a deep through-cut as it passes through two small points in the cliff. The grade is almost completely eroded away at several locations where the cliff face is very steep and lacks solid bedrock. The archaeological report indicates a few old piling and trestle remnants are present in these locations, suggesting that at least some of the grade may have been supported by a wooden trestle. The archaeological report indicates that two archaeological sites have been discovered on the 9-acre portion of the property west of Highway 1, one prehistoric, and the other historical. In addition, one prehistoric isolated discovery was also made [see Exhibit No. 11].

## **2. Project Description**

The first parcel involved in the boundary line adjustment (APN 131-010-14), herein referred to as "Parcel 1," is a roughly bow tie shaped 38.5-acre parcel that extends inland from the ocean as much as 1,300 feet. Highway 1 bisects the parcel roughly in the narrow (approximately 70-ft. x 210-ft.) middle of the bow-tie shape of the parcel. The 9-acre bluff-top portion of the parcel west of the highway is generally flat open grassland affording views of the ocean from Highway 1. The 29.5-acre portion of Parcel 1 east of the highway includes similar open grassy flat areas near the highway which gradually give way to more rolling terrain near the base of the coastal ridge, and finally to the lower portions of the coastal landform known as Cliff Ridge. This portion of Parcel 1 is also grass-covered with scattered clumps of brush and largely devoid of trees. A minor saddle crosses the southerly third of the property, from east to west, terminating in a small hillock rise.

The second parcel involved in the boundary line adjustment (APN 131-010-12), herein referred to as "Parcel 2," covers approximately 51.5 acres and borders the eastern boundary of the first parcel. Parcel 2, comprised of a 40-acre, "quarter-quarter section" together with 11 additional acres in the adjoining sixteenth-section to the south, extends approximately ¼-mile further to the east and encompasses more of the lower flanks of Cliff Ridge.

The proposed boundary line adjustment would adjust the parcels in a way that would establish the new boundary between the two parcels at Highway 1. As a result, the 9-acre westerly portion of Parcel 1 would exist west of Highway 1 and an 81-acre parcel comprised of the easterly portion of Parcel 1 together with Parcel 2 would exist east of the highway [see Exhibit No. 4]. No development other than the boundary line adjustment is currently proposed.

## **C. ANALYSIS OF LCP CONSISTENCY.**

As discussed in detail in Staff Report Section II.C.5, in the last several pages of the staff report, the Commission is denying the proposed lot line adjustment for its inconsistencies with visual policies of the certified LCP. The project as proposed is consistent with certain other LCP policies, including those on geologic hazards, environmentally

sensitive habitat areas, and archaeological resources, as the proposed lot line adjustment would contain one building site consistent with these other LCP policies. It is also possible that water and sewer would be available to serve the resulting parcels but technical data would first need to be supplied and verified. To set forth how development constraints affect how future development can be located on the property, with or without the proposed lot line adjustment, it is useful to discuss these other subject findings first.

## **1. Geologic Hazards**

### LCP Policies:

LUP Policy 3.4-1 states the following in applicable part:

*The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps, the County shall require a geologic investigation and report, prior to development to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site...*

LUP Policy 3.4-3 states the following:

*The County shall review development proposals for compliance with the Alquist-Priolo Special Studies Zone Act (as amended May 4, 1975)*

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) state that:

*The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:*

*Setback (meters) = Structure life (years) x Retreat rate (meters/year)*

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*



*All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.*

LUP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) state that:

*Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses.*

Section 20.500.015(A) of the Coastal Zoning Code states in applicable part:

- (1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*
- (2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

Section 20.500.010 of the Coastal Zoning Code states that development shall:

- (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) Assure structural integrity and stability; and*
- (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 20.500.020(B) of the Coastal Zoning Code states that:

*Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

#### Discussion:

On October 23, 2000 the applicant's representative submitted an engineering geologic reconnaissance (BACE Geotechnical, 10/19/00) [see Exhibit No. 9]. The preparation of this report followed from a request by the Commission that information on the presence of geologic constraints on the portion of Parcel 1 west of Highway 1 might be assessed to

determine if future building sites on the proposed parcel to be created in this area could be developed in full consistency with the certified LCP.

The report-letter describes the subject property westerly of Highway 1 as comprising a coastal terrace lying approximately 190-200 feet above the beach, composed of a mixture of poorly to moderately consolidated Pleistocene-age sands, silty sand, and sandy silt deposits of 10-15 feet in thickness. These deposits overlie slightly more resilient Franciscan Formation sandstone and minor shale of Cretaceous-Tertiary age. The report noted the presence of a deep through-cut down to bedrock that extends laterally along the blufftop margin where the tracks and trestle of a logging railroad were formerly laid.

The report concluded that based upon an average retreat rate of 2½ inches per year for the 75-year economic lifespan of a residential structure, and including a five-fold safety factor, a setback of 78-feet from the inland extent of the railroad cut bank should be established for the length of the parcel's blufftop. Such a setback would leave a band of buildable area approximately 200-300 feet in width extending inland from the railroad cut to the highway where structures could feasibly be placed.

The primary purpose for the report was to assess if the boundary line adjustment as proposed would result in a legal parcel being created located entirely west of Highway 1 without a geologically stable building site, given the presence of other site constraints (i.e., wetlands, buffer areas, known and potential archaeological sites). Although the report would not be a sufficient geotechnical investigation for a specific building site proposal, and the report contains a caveat stating as much, stable building sites do appear to exist west of the highway that would not require intrusion into environmentally sensitive areas (i.e., wetlands, buffers, archaeological sites). These stable areas are located on the southern half of the parcel as proposed to be adjusted.

Therefore, as geologically stable building sites located outside of prescribed setbacks exist on the westerly parcel as proposed to be adjusted, the Commission finds that the proposed project is consistent with the policies of the certified LCP regarding geologic hazards.

## **2. Environmentally Sensitive Habitat Areas**

LUP Provisions (Excerpts from the Mendocino County General Plan– Coastal Element):

LUP Chapter 3.1 states the following with regard to Environmentally Sensitive Habitat Areas within the County of Mendocino's coastal zone:

*In Mendocino County, environmentally sensitive habitat areas include: anadromous fish streams, sand dunes, rookeries and marine mammal haulout areas, wetlands, riparian areas, pygmy vegetation containing*

*species of rare or endangered plants, and habitats of rare and endangered plants and animals. [emphasis added]*

Policy 3.1-1 states:

*The various resources designations appearing on the land use maps represent the best information available at this time and therefore create a presumption of accuracy which may be overcome only with additional information that can be shown to be a more accurate representation of the existing situation than the information that has been used to determine these boundaries. Such showing shall be done in the context of a minor amendment to the land use plan.*

Policy 3.1-7 states, in applicable part:

*A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width...[emphasis added]*

Policy 3.1-32, pertaining to lot line adjustments involving Environmentally Sensitive Habitat Areas, states:

*Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7.*

IP Provisions (Excerpts from the Mendocino County Coastal Zoning Ordinance):

Section 20.496.020 provides criteria for developments occurring within ESHAs. The section implements LUP Policy 3.1-7 verbatim and further states in applicable part:

*New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

Discussion:

The elevations of the two parcels involved in the proposed adjustment range from approximately +6 feet Mean Sea Level (msl) along the western property line of Parcel 1 (Mean High Tide Line) to approximately 450 feet above sea level at the ridge crest of Parcel 2. Much of the subject property is located on the open marine terrace that spans both sides of Highway 1. Typical vegetative cover in this area is comprised of a mixture of sweet vernal grass (Anthoxanthum orodatum), common velvetgrass (Holcus lanatum), tall fescue (Festuca arundinacea), common yarrow (Achillea millefolium), haity cat's ear (Hypochaeris radicata), New Zealand biddy-biddy (Acaena novae-zelandiae), and Douglas Iris (Iris douglasii). The property is also transected by several emergent and scrub-shrub wetland areas dominated by pennyroyal (Mentha pulegium), common rush (Juncus patens), and California blackberry (Rubus ursinus).

A wetland assessment for the project was prepared at the request of the Commission (Wetlands Research Associates, Inc., 8/30/00) for Parcel 1. Based upon characteristics used by the Commission, the study reported that a total of 3.44 acres of wetlands were found on the property in the form of linear areas corresponding to natural and man-made drainage courses and numerous pocket wetlands ranging from 0.01 to 0.30 acre in size [see Exhibit No. 8].

LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 require that a buffer area be established adjacent to all environmentally sensitive habitat areas (ESHAs) to provide sufficient area to protect the areas from significant degradation resulting from future developments. The default width of the buffer area shall be a minimum of 100 feet measured from the outside edge of the ESHA. The LCP includes a provision for reducing the buffer width down to as small as 50 feet provided the applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and the County planning staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. No evidence supporting a reduced buffer has been submitted at the time of the writing of this report. Accordingly, a minimum 100-foot buffer width from the outside edge of the wetland areas is indicated for this project.

The applicant's representative has submitted a copy of the wetland assessment map with a 100-foot-wide buffer delineated around the wetland areas maps within the wetlands assessment [see Exhibit No. 12, page 25]. This map shows that several areas exceeding one acre in size outside of both ESHAs and their buffers are located on Parcel 1 on both sides of the highway. Accordingly, the boundary line adjustment as proposed would not result in any parcels located entirely within an ESHA or buffer area. Further, all parcels resulting from the lot line adjustment would contain adequate building sites located

outside of the buffer areas. The Commission notes that project alternatives which result in both parcels having building sites east of the highway would also allow for development entirely outside of ESHA and buffer areas.

Thus, the Commission finds that the boundary line adjustment as proposed would be consistent with the LCP policies for the protection of environmentally sensitive habitat areas in that: (1) the presence and extent of ESHAs on the site have been studied and mapped; (2) no resulting parcel will be located entirely within an ESHA; (3) no resulting parcel will be located entirely within a buffer area; and (4) areas will remain on all resulting parcels to allow for development of adequate building sites, as required under LUP Policies 3.1-1, 3.1-7, and 3.1-32, and Coastal Zoning Ordinance Section 20.496.020.

### **3. Archaeological Resources**

#### **LUP Provisions (Excerpts from the Mendocino County General Plan– Coastal Element):**

Policy 3.5-10 of the Mendocino County Land Use Plan states in applicable part the following:

*The County shall review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources. Prior to approval of any proposed development within an area of known or probably archaeological or paleontological significance, a limited field survey by a qualified professional shall be required at the applicant's expense to determine the extent of the resource...The County shall review all coastal development permits to ensure that proposed projects incorporate reasonable mitigation measures so the development will not adversely affect existing archaeological/paleontological resources. Development in these areas are subject to any additional requirements of the Mendocino County Archaeological Ordinance.*

#### **IP Provisions (Excerpts from the Mendocino County Coastal Zoning Ordinance):**

Section 20.532.095 of the Mendocino Zoning Code in part states that:

*(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

*...*

*(5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.*

Discussion:

According to A.L. Kroeber's "Handbook of the Indians of California," the project site is located within that area that was traditionally used by the *bokeya* division of the Pomo tribe. During the summer and fall seasons, coastal beach and terrace areas were commonly used to stage abalone and kelp harvesting activities, and for the collection and processing of other plant and animal products for foodstuffs, clothing, and ceremonial regalia. These original inhabitants were displaced upon the arrival of European peoples in the late 18<sup>th</sup> and early 19<sup>th</sup> century, with the predominant lands uses of Mendocino County coastal areas subsequently shifting to fur-trapping, and later to mining, timber production, fishing, and agriculture.

Policy 3.5-10 of the LUP requires that a limited field survey by a qualified professional be conducted prior to County approval of a coastal development permit for any development within an area of known or probable archaeological significance. Prior to consideration by the Commission, the Mendocino County Archaeological Commission reviewed the project and determined that an archaeological survey would be required. An archaeological assessment was prepared for the 18-acre area comprising the proposed lot to be created west of the highway and the adjacent existing parcel to the south (Max A. Neri, Consulting Archaeologist, 9/17/99) [see Exhibit No. 11]. The Archaeological Commission subsequently accepted the report on March 8, 2000.

The Neri study found two prehistoric and one historic cultural resource sites, enumerated as:

- Isolate-01: A very small shell midden containing dense deposits of shell fragments.
- Site-02: An area of very sparse lithic scatter comprised of chert and obsidian flakes, and burnt bone fragments. The site also contained extensive amounts of cattle bones, some showing signs of recent (non-prehistoric) butchering.
- Site-01/H: The remnants of a historic narrow-gauge logging railroad that used to travel down the Mendocino County coastline. The site consists of a 10 to 20-foot-deep through-cut into the terrace deposits down to bedrock running along the edge of the blufftop, with several old piling and trestle remnants scattered through out the area and down the bluff face.

The report observed the highly disturbed and impacted condition of these sites associated with the construction of the railroad and subsequent blufftop erosion of the rail bed. The assessment concluded that given their location, sparseness, and lack of integrity neither of the prehistoric sites would be considered potentially significant or would be impacted by any proposed future construction at the site. With respect to the historic rail roadway, the report found the site to be moderately significant when viewed as part of a regional

historic resource. The report also noted that due to the imposition of setbacks from the geologically unstable bluff areas, future construction on the site would not harm any portion of the railroad grade or cause additional erosion that might damage the resource.

Thus, the Commission concludes that as: (1) an archaeological report for the development site was prepared and accepted as required by LUP Policy 3.5-10, and (2) the lot to be created west of the highway under the proposed boundary line adjustment would contain building sites that would not have any adverse impacts on any known archaeological or paleontological resource or ESHA resource, the proposed lot line adjustment would be consistent with LUP Policy 3.5-10 and Section 20.532.095 of the Mendocino Zoning Code. Therefore, the Commission concludes that the project as proposed would be in conformance with the archaeological resources policies of the certified LCP. Since there are no archaeological and paleontological resources east of the highway, the Commission notes that project alternatives which result in both parcels having building sites located east of the highway would also allow for development that would not have any known impacts on these resources.

#### **4. Adequacy of Water Supply and Septic Capacity**

Several policies within the County's LCP address both in general and specific language requirements for assessing and demonstrating that an adequate water supply and means of disposing of waste from the development will be available on lots resulting from a coastal development permit for the boundary adjustment..

#### **LUP Provisions (Excerpts from the Mendocino County General Plan– Coastal Element):**

Policy 3.8-1 states the following in applicable part:

*Highway 1 capacity, availability of water and sewage disposal system and other know planning factors shall be considered when considering applications for development permits.*

With specific regard to the adequacy of a water supply, Policy 3.8-9 states the following in applicable part:

*Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)...*

With specific regard to onsite sewage disposal systems, Policy 3.8-7, in applicable part, states:

*Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where ... a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.*

Policy 3.9-1 states, in applicable part:

*One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.*

IP Provisions (Excerpts from the Mendocino County Coastal Zoning Ordinance):

Section 20.532.095 in part states that:

*The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

...

*(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...*

Discussion:

As noted previously, the proposed project is a lot line adjustment between two existing parcels and does not include any physical development on the ground. No development that would generate a need for water and other services is proposed in the current application. However, as the certified LCP would allow at least one residence on each of the adjusted parcels as a principally permitted use, the capacity of the parcels as adjusted



to support such uses needs to be considered in conjunction with the coastal development permit for the boundary adjustment.

#### Hydrologic Setting of the Mendocino County Coastline

The project site is not served by any community water system and there are no streams or other surface waters on the site sufficient to provide water supply. As with most rural areas of the Mendocino County coastal zone not served by a community water system or with available surface water, domestic water supplies would have to come mainly from groundwater wells. As noted in the background section on Water Supply in Chapter 3.8 of the LUP, some areas of the coastal zone do not have adequate ground water to serve even existing development, necessitating the hauling of water during the late summer and fall of dry years.

The California Department of Water Resources has been conducting an ongoing coastal-wide groundwater study. The study produced a report entitled, "Mendocino County Coastal Groundwater Study," published in 1982. The report establishes areas of Sufficient, Marginal, Critical, and Critical Bedrock Water Resource areas, and recommends Land Use Densities in these areas. This study is referred to in Policy 3.8-9.

The Mendocino County Coastal Groundwater Study identifies the subject property as being within a "Critical Water Resource area" (CWR). The land-use density recommendations of the Groundwater Study state in applicable part, the following:

The determination of availability of ground water for a specific development requires professional judgement and interpretation of all available data. This study, though not site specific, has identified coastal areas of differing ground water availability... From this information, general guidelines can be drawn to aid the planner in reviewing proposed developments. It is recommended that: ...Areas designated CWR (Critical Water Resources) shall have a minimum lot size of 5 ac and demonstration of "proof of water." All lots less than 5 ac shall be required to demonstrate 'proof of water' and may require an environmental impact statement. [emphasis added]

#### Requirements for Establishing Water Supply Adequacy

The LUP policies cited above require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. Policy 3.8-1 states that availability of water shall be considered when considering applications for development permits. Policy 3.8-9 states that the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months that will accommodate the proposed parcels. Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate, water capacity exists, and the determination of service capacity shall be made prior to the issuance of a coastal development permit. Coastal Zoning Ordinance Section 20.532.095 states that the

granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

As set forth above, the Mendocino County Coastal Groundwater Study recommends that development proposed on parcels in CWR-designated areas be required to demonstrate “proof of water.” However, no technical evidence was submitted with the application to establish whether adequate groundwater supplies are available to serve residential and other development that might be proposed on the adjusted parcels in the future. Instead, the supporting interested parties have submitted a series of correspondence from a local special district water provider and the applicant regarding potential offsite sources of water supply [see Exhibit Nos. 10 & 12].

As stated in the most recent letter from the manager of the Elk Creek Water District (ECWD), dated March 2, 2000, the district’s Board of Directors voted to allow a water system connection for one residential connection for the proposed parcel to be created west of Highway 1 subject to the following conditions:

- Approval must be obtained from the County of Mendocino Local Agency Formation Commission (LAFCo) for an “out of area service contract” and or annexation of the parcel into the district’s boundaries;
- Engineering plans showing adequate flow is available to the project site without reducing service to other district connections must be approved by the ECWD;
- A storage tank of 1,500-gallon capacity with adequate back-flow prevention and re-pressurization must be provided; and
- All costs associated with the LAFCo approval or annexation, engineering, installation of the meter, installation of the line extension by an A-1 licensed contractor, and a connection must be paid.

The Commission finds that, despite the favorable statements of the Elk County Water District to provide water service to the parcel proposed to be created west of the highway, the offer is too speculative to be considered as a formal demonstration of proof of water as required by the County’s LCP. In order for water to be supplied to the site, the applicant and the district must first secure several authorizations from both LAFCo and the County of Mendocino, including amendment to the district’s sphere of influence,” annexation or permission to provide service beyond service boundaries, and a coastal development permit for the physical installation of the service line extension. Such an expansion of service area or a proposal to expand service to an area outside of the urban limit line would raise concerns about growth inducing impacts and would likely require an LCP amendment that would have to be certified by the Commission. Given the

potential for significant impacts on the environment, an environmental report is likely to be required. In addition, it may not be possible to fully mitigate the growth inducing impacts of such an undertaking to levels of insignificance. Given the significant issues such a proposal would raise and the uncertainty as to whether the necessary approvals could be obtained, provision of water service by the ECWD cannot be relied upon as a means of providing water to the parcel as proposed to be adjusted.. Accordingly, the Commission does not consider the subject correspondence as an adequate demonstration of proof of water.

The Commission has also been provided with correspondence from the applicant received November 9, 2000. This letter discloses the existence of a water well on a neighboring parcel owned by the applicant southeast of the project site. This parcel is the site of a former lumber mill and the wellhead is said to be located near the northwest corner of the mill's shop building. The applicant states his willingness to enter into an agreement to provide water to the 9-acre parcel as a condition of approval of the proposed boundary line adjustment. The applicant states that the mill water system yields 100 gallons per minute.

Based upon quantitative water supply standards stated within the LCP and Commission staff discussions with staff from the County's Environmental Health Department, this water source appears adequate to serve all future development of the parcels involved. In general, if a water quantity test indicates that a minimum of one gallon per minute can reliably be supplied by a well, the well is adequate to serve as a domestic water supply. Assuming that information contained in the applicant's letter, stating that the well on the neighboring parcel yields "about 100 gallons per minute" is accurate, this proposed water source would easily meet the County's well water production requirements to serve all parcels created by the boundary adjustment. Recording an appropriate easement or other legal instrument would be a means of guaranteeing that any future development on the parcels involved in the proposed boundary adjustment could utilize water from the mill water system. It should be noted that no technical data has been supplied with the application regarding the actual production volume of the well or the adequacy of this proposed water supply in terms of its potability or year-round reliability. Before the proposed boundary line adjustment could be found consistent with the requirements of LUP Policy 3.8-1 and 3.8-9 and Coastal Zoning Code Section 20.532.095 that an adequate water supply would be available to serve the proposed development, technical data would need to be supplied to verify the volume and potability of the water from the mill water system.

#### Sewage Disposal System Requirements

Similar to the LUP policies that address domestic water supplies, the LUP policies cited above require that the approving authority consider whether an adequate site to develop an on-site sewage disposal system to serve proposed development is available before approving a coastal development permit. Policy 3.8-7 states that a site evaluation shall be satisfactorily completed before approval of land divisions, lot line adjustments, mergers

and certificates of compliance. Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that the determination of service capacity shall be made prior to the issuance of a coastal development permit. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. Again, these policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

Based upon quantitative sewage disposal system standards stated within the LCP, the findings of the wetlands assessment regarding on site soil characteristics, and Commission staff discussions with staff from the County's Environmental Health Department, there appear to be suitable areas where onsite sewage disposal systems could be developed to adequately serve all future development of the parcels involved. In general, if a site can be found that: (1) is at least 100 feet from any well, water body, or major break in terrain; (2) is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope; and (3) meets established soil depth, texture and percolation rate criteria, the site may be approved for development of an onsite sewage disposal system.

Assuming that information contained in the wetlands assessment regarding how the terrace soils are typically well-drained notwithstanding their dark color indicating otherwise is accurate, there are several areas on all parcels as proposed to be adjusted where septic systems could conceivably be developed. It should be noted that, except for the wetland assessment study areas, no technical data has been supplied with the application regarding the actual soil and slope conditions in terms of septic system suitability. Before the proposed boundary line adjustment could be found consistent with the requirements of LUP Policy 3.8-7 and 3.8-9 and Coastal Zoning Code Section 20.532.095 that an adequate sewage utilities would be available to serve the proposed development, technical data would need to be supplied to verify the suitability of specific areas for onsite sewage disposal.

## **5. Visual Resources**

### **LUP Provisions (Excerpts from the Mendocino County General Plan– Coastal Element):**

Policy 3.5-1 states in applicable part:

*The scenic and visual qualities of Mendocino county coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual*

*quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. [emphases added]*

Policy 3.5-3 states in applicable part:

*The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as 'highly scenic areas' within which new development shall be subordinate to the character of the setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks coastal streams, and waters used for recreational purposes.*

...

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1. \**

...

*All proposed divisions of land and boundary line adjustments within 'highly scenic areas' will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies. [emphases added]*

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- \* In addition to areas on the west of Highway 1, the certified Land Use Map covering the area where the project site is located states, "everything within view easterly of (the) highway is designated highly scenic."

Policy 3.5-4 states, in applicable part:

*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open area shall be avoided if an alternative site exists.*

...

*Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms.*

IP Provisions (Excerpts from the Mendocino County Coastal Zoning Ordinance):

Section 20.504.015 states, in applicable part:

*Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...*

- (3) *New development shall be subordinate to the natural setting ...*
- (4) *All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this chapter.* [emphasis added]
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area...*
- (6) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding development in large open areas if alternative site exists; (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms...*

Discussion:

Visual Setting

The proposed development site is located in a rural agricultural area 1½± miles south of the unincorporated town of Elk. Due to the extensive views up and down the coast, the dramatic nature of the high coastal bluffs of the area, and the largely undeveloped character of the setting, the visual resources of the project site are of great significance. From the subject property, sweeping blue water views are afforded to travelers along Highway 1. Views of the ocean directly seaward from the highway frontage are mostly limited to open ocean along the horizon due to the elevation differences between the blufftop and beach that block closer shoreline views. Southbound travelers are afforded broad oblique-angle views of the scenic headlands at the mouth of Elk Creek, offshore sea stacks and reefs, and on clear days, distant horizon views of Point Arena and its historic lighthouse. Northbound travelers can also view portions of the forested crest of Greenwood Ridge to the northeast. Oblique-angle inland views for southbound travelers include more terrace pastureland on adjacent parcels to the south and extend to the promontory demarcated as “Sugar” on topographic maps of the area [see Exhibit No. 2].

The 9-acre portion of Parcel 1 proposed to be created on the west side of the highway is a generally flat, open grassland stretching along approximately 600 lineal feet of coastline. The area is generally open in character, however, several houses have been constructed on the parcels to the north. In addition, a residence is currently being reviewed by the County on the 9-acre parcel situated entirely west of the Highway directly to the south of the project site.

The highly scenic area inland of the highway extends easterly to include all areas within view of the highway, including more grazing land that gives way to the lower flanks of the coastal landform known as Cliff Ridge. Views across the 29.5-acre portion of Parcel 1 east of the highway include open grassy flat areas with scattered brush outcroppings near the highway which gradually give way to more rolling terrain near the base of the coastal ridge, and finally to the lower portions of the coastal ridge itself. This portion of the parcel is also largely devoid of trees. However, several agricultural outbuildings and former sawmill structures exist on the parcels inland of the highway immediately south of the project site.

Parcel 2, the second parcel involved in the boundary line adjustment (eastern portion of APN 131-010-12), covers approximately 51.5 acres and extends another approximately 1,300 feet farther to the east and includes more of the coastal ridge. Parcel 2 is similarly vegetated with upland grasses and forbs interspersed with small brushy thickets. Most of the parcel, encompassing its western ocean-facing slopes, is visible from Highway 1.

#### Analysis of Conformance of Boundary Adjustment to Visual Resource Policies

As previously described, Parcel 1, the first parcel involved in the boundary line adjustment (western portion of APN 131-010-12 together with APN 131-010-14X), is a roughly bow tie shaped 38.5-acre parcel that extends inland from the bluff face to a location that is as much as 1,300 feet inland of the ocean. Highway 1 bisects the parcel roughly in the narrow middle of the bow tie shape of the parcel. The proposed boundary line adjustment would adjust the parcels in a way that would establish the new boundary between the two parcels at Highway 1. As a result, a 9-acre parcel, comprised solely of APN 131-101-14X would exist west of Highway 1 and an 81-acre parcel, consolidating the two portions of APN 131-101-12, would exist east of the highway.

As indicated above, the subject site is located within the highly scenic area designated by LUP Policy 3.5-3 constituting those portions of the coastal zone lying on the west side of Highway 1 between the Navarro River and the City of Point Arena. In addition, a notation on the Land Use Map for the project area states, "everything within view easterly of highway is designated highly scenic" [see Exhibit No. 3]. Both LUP Policy 3.5-3 and Zoning Code Section 20.504.015(4) call for consideration of the visual impact of future development at the time boundary line adjustments are considered.

To find consistency with the LCP visual policies, a proposed project must be measured against criteria or tests set forth within the Land Use Plan and implementing zoning

regulations. As applied to the proposed project and its particular setting (i.e., not involving ridgeline development), the various policies require that the proposed boundary line adjustment must be analyzed for consistency of potential future development with the following tests:

- Future development must be sited and designed to protect views to and along the ocean and scenic coastal areas including designated highly scenic area inland of Hwy 1;
- Future development must be sited and designed to minimize the alteration of natural land forms; and
- Future development must be subordinate to the character of its setting. To achieve such a result, the LCP policies further prescribe that future development: (a) be sited near the toe of a slope, (b) be sited below rather than on a ridge, (c) be sited in or near the edge of a wooded area, and (d) avoid being placed in the middle of a large open area if an alternative site exists, and (e) be clustered near existing vegetation, natural landforms, or artificial berms.

Future Development West of Highway 1: A principal consequence of the proposed boundary line adjustment is that a legally created parcel would result lying completely west of Highway 1. Future development of the westernmost parcel would have to be located west of Highway 1, whereas under the current parcel configuration, a building site could be located on the portion of Parcel 1 east of Highway 1 where it would not affect views of the ocean.

Although these potential impacts are acknowledged in correspondence from the applicant's agents and supportive interested parties [see Exhibit No. 12], these parties argue that since the highly scenic area extends across all portions of the property and as the LCP does not prioritize the protection of ocean views over the protection of views inland along the coast, substantial visual impacts associated with future development of buildings on the parcel are unavoidable whether the parcel is adjusted or not. In addition, these parties note that several houses have been constructed or are in the process of being developed with structures on the west side of the highway, whereas no similar developments have been pursued on the east side of the highway. Accordingly, these parties conclude that the parcels as proposed to be adjusted on the western side of Highway 1 should be found consistent with the visual resources policies of the County's LCP as future development on the western side: (1) could be sited and adequately mitigated with landscaping to minimize viewshed impacts; (2) would be in character with other housing developments in the area on the west side of the highway; and (3) would be subordinate to the rural residential setting along the western side of the highway.

Although observations about the scenic nature of both sides of the highway and the pattern of development west of the highway are accurate, it should be noted that



development in the area is still largely scattered. Although a cluster of mill buildings exists on the east side of the highway to the south of the project site, the focus of views for travelers on Highway 1 is more likely to be drawn toward the magnificent ocean vistas rather than inland. Any home built on the portion of the property west of the highway would be the only house currently within view west of the highway between a home currently being constructed on the adjacent property to the north and to the south at least as far as the top of the southern headlands of Elk Creek, a straight-line distance of approximately one mile and farther in highway miles. It should be noted that the visual setting of this portion of the coast is evolving as the County of Mendocino is currently processing a coastal development for the construction of another house on the blufftop parcel directly south of the project site (CDP #72-00, George R. DelGaudio, Applicant). If this structure is approved, the open vista distance between homes along this portion of the coast would be reduced, but still provide for an approximately ¼-mile separation.

In addition, as noted above, the landscape of the area west of the Highway consists of an open grassy-covered terrace without trees, hills, or other major vegetation or topographical features. A person traveling along Highway 1 is afforded unobstructed views to and along the ocean across the portion of Parcel 1 west of the highway. Opportunities to locate a house on the parcel to be created west of the highway near the toe of a slope or clustered near existing vegetation, natural landforms, or artificial berms are extremely limited. The only feature of the site west of the highway that presents the possibility for creating a shield or backdrop to help make a future structure subordinate to the character of its setting is a small area of brushy vegetation on the southern half of the proposed parcel located near the blufftop. However, assuming the 78-foot blufftop setback recommended in the geologic report prepared for the proposed west-of-highway parcel is applied [see Exhibit No. 9], the house would need to be shifted eastward into the open terrace area, greatly reducing the value of the shrubby area as a backdrop. Accordingly, there is no place on the property west of the highway where a home and landscaping intending to soften the visual expression of the house could be placed where it would not significantly affect views of the ocean from the highway.

With respect to the requirement to minimize the alteration of natural land form, some minor alteration of natural landforms would also likely result from future development west of the highway. Establishing a building site and accessway and utility placement would require clearing of vegetation and grading that would result in notable modifications to the current open landscape.

With regard to requirements that new development be subordinate to the character of its setting, given the open nature of the site and the lack of major vegetation or prominent landforms, structures developed west of the highway would form a silhouette against the horizon obstructing views to and along the coast. Consequently, any structure placed above grade in this area would be the dominant feature and would not be subordinate to the character of the setting. Given the absence of trees and other major vegetation west of the highway, planting landscaping to screen the house would still make the

development insubordinate to the character of its setting as the character of the area does not include such vegetation.

Future Development East of Highway 1: Future improvements on the most eastward of the two parcels proposed in the boundary line adjustment meet the three development criteria. Although the landscape on this side of the highway is similarly open in character, the inland side of the highway has a backdrop of slopes and ridges against which the visual dominance of future development would be muted.

With respect to the requirement to minimize the alteration of natural land forms, while some alteration of natural landforms associated with clearing for building sites, roadways, and utilities would be required, these modifications to the terrain would similarly be less noticeable than those undertaken on the west side of the highway. Accordingly, there are opportunities to site and design future development on the east side of the highway such that the alteration of natural landforms can be minimized.

Finally, regarding requirements that prescribed siting and design standards be followed to ensure that future development be subordinate to the character of its setting, there are several locales on the property east of the highway where this can be accomplished. As previously described, the property east of the highway transitions from open terrace pasture into slopes rising to the first coastal ridge. This terrain provides a setting where house sites could be placed at the toe of the slope among the natural undulations of the land rather than on the ridge or in an open area. These opportunities are not similarly available on the property west of the highway.

The applicant's agents and supporters have responded that due to the presence of extensive wetlands and the need to locate building sites and sewage systems in well-drained locations, significant sensitive environmental habitat impacts would inevitably result from future development on the east side of the highway. These parties assert that the presence of wetlands on portions of the property east of the highway would preclude septic systems and normal house site development.

As previously discussed under Staff Report Section II.C.2, above, the applicant's representative has submitted a copy of the wetland assessment map with a 100-foot-wide buffer delineated around the wetland areas maps within the wetlands assessment [see Exhibit No. 12, page 25]. This map shows that several areas exceeding one acre in size outside of both ESHAs and their buffers are located on the eastside of the highway where future home sites could be developed. As regards the stated concerns regarding limitations on septic system development east of the highway, it should be noted that even if septic system placement on the lower terrace were to be precluded by on site wetlands, it is possible to develop a disposal leachfield on suitable uphill areas. It is not an uncommon or infeasible practice for homeowners to install pressurized sewage systems to pump sewerage to upland areas so that low-lying areas unsuitable as disposal fields are avoided. Accordingly, despite assertions to the contrary, future building sites

and sewage disposal systems could be developed on the east side of the highway outside of ESHAs and related buffer areas.

### Conclusion

The coastal visual resource affected by the decision is of great significance. The certified LCP designates the subject property and the area surrounding it as “highly scenic” in recognition of its visual qualities. The site is located in a largely undeveloped rural area where open agricultural grazing lands lie atop a high coastal terrace that offers sweeping vistas of the ocean and coastline to the west and southwest. The headlands at the mouth of Elk Creek and the Point Arena landform and its lighthouse, a nationally listed historic landmark, to the south further enhance the visual interest of the setting.

Views inland from the highway in the project vicinity include open terrace pasturelands and grassy hills that give way to forested ridges farther to the east. Although these vistas are within the same designated highly scenic area as those along the west side of the highway, these vistas do not dominate the visual landscape as much as the dramatic views of the ocean and coastline west of the highway. Moreover, there is considerable area inland of the highway where potential future building sites could be feasibly developed that would meet the criteria of the LCP to minimize visual impacts from development on terraces.

Therefore, as future development of the westernmost parcel as proposed to be adjusted would: (1) adversely affect views to and along the ocean; (2) result in the alteration of natural vegetation landforms; and (3) not be subordinate to the character of its setting, the project as proposed is inconsistent with the provisions of LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015 that require that new development be sited and designed to protect views to and along the ocean. Thus, the Commission finds the project as proposed would be inconsistent with LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015.

Finally, the Commission finds the proposed boundary line adjustment to be inconsistent with LUP Policy 3.5-4 and Coastal Zoning Ordinance Section 20.504.015. These provisions require that new development be sited in prescribed locations to minimize visual impacts on open terrace areas. Under the current parcel configuration, an alternative site exists east of the highway near the toe of the coastal ridge, a natural landform, where a future house could be located consistent with the above stated provisions. Under the proposed parcel configuration and to avoid geologically unstable blufftop areas, a future house on the westernmost portion of Parcel 1 would have to be located in a large open area on the coastal terrace where it would substantially impact visual resources. Accordingly, as the cited LCP policies state that boundary line adjustments within highly scenic areas shall not be allowed if development of resulting parcels could not be consistent with visual policies, the proposed boundary line adjustment must be denied.

**D. CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

Section 13906 of the California Code of Regulation requires Coastal Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact that the activity may have on the environment.

The Commission incorporates its findings on LCP consistency at this point as if set forth in full. The proposed project is not consistent with the policies of the certified LCP that require that impacts to coastal visual resources be avoided or minimized. There are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. For example, the Commission has determined that project alternatives which result in both parcels having building sites east of the highway are less environmentally damaging feasible alternatives. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

**EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Portion, Land Use Plan Map No. 20 - *Elk*
4. Proposed Boundary Line Adjustment
5. Notice of Final Action
6. Appeal No. 1, filed April 18, 2000 (Reimuller, Adams, Withers)
7. Appeal No. 2: filed April 20, 2000 (Wan, Woolley)
8. Wetlands Assessment
9. Geo-technical Reconnaissance
10. Proof of Water Availability
11. Archaeological Assessment
12. Correspondence